Several European competition Authorities have intervened in the wine sector, not surprisingly in the countries – France, Italy and Spain – where it is more relevant. Their decisions illustrate both different categories of antitrust intervention – respectively, a merger, an opinion delivered to the Government and a cartel - and the application of antitrust economics to the wine industry.

Some policy indications seem to emerge: how to segment the wine sector, to what extent the producers of a specific designation of origin can coordinate their activity and when quantity restrictions can be admitted, being price agreements always forbidden.

The present contribution derives from these decisions, first of all, the role that can be played by qualitative - in terms of wine appellations or grape varieties – and quantitative evidence in the definition of relevant markets. Relevant markets definition is the first and still necessary step in any competitive assessment. Even where it is possible to move directly to the assessment of competitive effects, it still plays in practice a central role. Authorities tend, indeed, to take into consideration a combination of qualitative and quantitative evidence. In that context, geographic appellations may be an important factor of choice for quality wines, while price and grape variety seem to be more relevant going down the quality pyramid. In the M&A antitrust clearances described in the contribution, specific protected designations of origin have been considered as possible relevant markets, sometimes all together at a regional level like Burgundy. Differently, for what concerns lower quality wines, the French Competition Authority has identified a wide unique market for ordinary wines for everyday consumption, comprising both wines with a protected geographical indication and wines without a geographical indication.

Then, it stresses the need to consider quantity restrictions only when they are proportionate to current European Union legislation. Quantity restrictions have generally the same effect as price fixing: any restriction of output normally results in a corresponding price rise. As in a monopoly this reduces total surplus by the so-called deadweight loss, causing allocative inefficiency. At the same time, it can also result in productive inefficiency, as production costs may be higher than the ones that would result from a more competitive environment, as well as in a reduction of dynamic efficiency. The legislation that allows, in the agricultural sector, to control quantities should, consequently, be interpreted as strictly as possible in a pro-competitive way. Only agreements which are compliant with EU legislation are legitimate, provided that their concrete application is proportionate to the aim of the legislation. In relation to quantities, the Common Agricultural Policy (hereinafter, CAP) states, in general, that agreements “by which competition is excluded” are always subject to competition rules. With specific regard to wine, it states that quantity restrictions should “be proportionate to the objective pursued” and should not “render unavailable an excessive proportion of the vintage that would otherwise be available.” In that context, quantity restrictions appear to be legitimate when they are linked directly to quality improvements, which depend, among other factors, also on climate. However, the proportionality of quantity reductions linked to meteorological conditions should be verifiable.
Other legitimate output restrictions are those aimed at improving or stabilizing the wine markets, provided, again, that they are proportionate. The opinion delivered by the Italian Competition Authority to Piedmont does not criticize in absolute terms the possibility to temporarily block quantities. It stresses the need to interpret the legislation, and the derogations to the general rules of competition, in a restrictive manner.

Lastly, it illustrates the functioning of a cartel aimed at restricting quantities in order to raise prices. When quantity restrictions are not compliant with EU legislation they may be considered anticompetitive. The Spanish Competition Authority “sherry” decision illustrates a cartel that was not compliant with EU legislation. The CAP does not, indeed, contain any provision that allows the imposition of supply side restrictions based on past sales, nor fixing minimum prices. Without the cartel, prices would have been determined by supply and demand as in any sector subject to competition. Contrary to economic logic, a market with dropping demand saw sherry prices rising. The Spanish “sherry” cartel is also paradigmatic of how much certain structural conditions of a given market may hinder its stability over time. These factors consisted in a too high number of companies in the sector, the absence of barriers to entry and a relevant reduction of demand.

The described antitrust interventions in the wine industry demonstrate not only that Authorities may intervene in the wine sector, but also that they may use different tools. Those tools range from the advocacy to Governments to the ascertainment of illegal agreements. They all go in the same direction: price agreements should always be forbidden, while quantities restrictions, which have normally the same effects, are tolerated only if they are strictly proportionate to current EU legislation. A more pro-competitive spirit aimed at quality improvements, overcoming merely mechanical quantity restrictions, is emerging.

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